

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennine Giordano	Team: Team # 3	CCRB Case #: 200601359	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/26/2006 1:30 AM	Location of Incident: C/O Liberty Avenue and Fountain Avenue	Precinct: 75	18 Mo. SOL 7/26/2007	EO SOL 7/26/2007	
Date/Time CV Reported Tue, 01/31/2006 5:07 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 01/26/2006 10:29 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edward Mulhearn	31166	930792	075 PCT
2. SGT Sean Downes	03978	918975	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Downes	Abuse: Sgt. Sean Downes drew his gun.	
B.POM Edward Mulhearn	Abuse: PO Edward Mulhearn drew his gun.	
C.POM Edward Mulhearn	Discourtesy: PO Edward Mulhearn spoke obscenely to § 87(2)(b)	
D.POM Edward Mulhearn	Force: PO Edward Mulhearn used physical force against § 87(2)(b)	
E.SGT Sean Downes	Abuse: Sgt. Sean Downes threatened § 87(2)(b) with the use of force.	
F.POM Edward Mulhearn	Abuse: PO Edward Mulhearn threatened § 87(2)(b) with the use of force.	

Synopsis

On January 26, 2006 at approximately 1:30 a.m., § 87(2)(b) a § 87(2)(b) was driving a white Jeep Cherokee on Crystal Street in Brooklyn. He was on his way to ensure that his tractor-trailer, which was parked on Liberty Avenue, was properly locked. As he waited at the red light on Crystal Street he observed that the traffic light on Liberty Avenue was also red. § 87(2)(b) determined that the light was damaged and made a left turn at the red light onto Liberty Avenue. Upon reaching the end of Liberty Avenue, § 87(2)(b) made an illegal U-turn in order to park directly behind the tractor-trailer. When he opened the door to his vehicle he noticed a black unmarked vehicle parked in the middle of the street. PO # 1, identified as PO Edward Mulhearn and PO # 2, identified as Sgt. Sean Downes both of the 75th Precinct, exited the vehicle and allegedly approached § 87(2)(b) with their guns drawn (Allegations A and B). Throughout the course of the incident, PO Mulhearn allegedly said, "Turn off your fucking vehicle and get out," "Shut the fuck up," and "What the fuck is your problem? Put your fucking hands behind your back" (Allegation C). PO Mulhearn allegedly placed his right hand on § 87(2)(b)'s left arm, pulled him out of the vehicle and then pushed him in his chest (Allegations D). Sgt. Downes allegedly removed a silver rod from his belt, extended it in his hand, and said to § 87(2)(b) "Either one way or the other you are going to put your hands behind your back" (Allegation E). An unidentified officer, PO # 3, arrived at the scene for two minutes to make sure PO Mulhearn and Sgt. Downes had everything under control. When PO # 3 left the scene, PO Mulhearn attempted to handcuff § 87(2)(b) and allegedly said, "You are lucky the other officer was passing by because I would have broken your fucking arm" (Allegation F).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old black male who is described as 5'11", 160 pounds with black hair and brown eyes, filed this complaint in person at the 75th Precinct shortly after the incident and it was referred to the CCRB on January 26, 2006. He was interviewed at the CCRB on March 6, 2006 (encl. 9-9e) § 87(2)(g)

On January 26, 2006 at approximately 1:00 a.m., § 87(2)(b) received a phone call from his father indicating that his 1998 Volvo tractor trailer, a refrigerated unit, for the moving company was not properly locked. He asked § 87(2)(b) to stop at the tractor-trailer on his way home to lock it. § 87(2)(b) and his father rent this tractor-trailer for work because they often bring produce back from Florida. The truck was parked on the corner of Liberty Avenue and Fountain Avenue in Brooklyn, which is approximately two blocks away from § 87(2)(b)'s house. Since the trailer is a commercial vehicle it had to be parked on this block. § 87(2)(b) was on his way home from Flatbush, Brooklyn, where he was visiting his friend, and was driving his 1995 white Jeep Cherokee about 10mph on Crystal Street. According to § 87(2)(b) the light on Crystal Street is known to have a delay and often gets stuck on red. It has been this way for a long time. As both lights were red in the intersection on Crystal Street and Liberty Avenue, § 87(2)(b) decided to go through the red light and make a left turn onto Liberty Avenue. There were no other vehicles waiting at the red light when § 87(2)(b) drove through the light. He then made an illegal U-turn at the end of Liberty Avenue in order to park directly behind the trailer. He opened the driver's side door to his vehicle but before he could exit, he noticed a black unmarked Impala parked in the middle of the street. It was evident from the way it was parked that it had come from the same direction as § 87(2)(b). PO # 1, the driver, a white male was approximately 5'7", husky build with blond hair and PO # 2, the passenger, described as a white male, approximately 6'2", with a slim build, approached § 87(2)(b)'s vehicle. PO #

1 walked in front of PO # 2 and both officers had their pointed towards the ground. The guns were never pointed directly at § 87(2)(b) PO # 1 and PO # 2 wore gold shields around their necks. § 87(2)(b) still seated in his vehicle, immediately put his hands in the air. PO # 1 approached § 87(2)(b)'s driver side door and PO # 2 approached the passenger door behind the driver seat. PO # 1 said, "Turn off the fucking vehicle and get out." § 87(2)(b) turned off the vehicle, left his key in the ignition, but still had his manual seatbelt on.

Immediately, PO # 1 attempted to pull § 87(2)(b) out of the vehicle. PO # 1's arms entered the vehicle in order to grab § 87(2)(b) PO # 1, using his right hand, grabbed § 87(2)(b)'s left upper arm and, using his left hand, grabbed the front of § 87(2)(b)'s sweater near his chest. Meanwhile, § 87(2)(b) grabbed the steering wheel and asked the officer to wait while he unfastened the seat belt. PO # 1's attempt to pull § 87(2)(b) from the vehicle lasted approximately two minutes. PO # 1 did not have his gun in his hand when he grabbed § 87(2)(b) and he is not sure what happened to it. He could not recall if PO # 2 was still holding onto this gun at this point. § 87(2)(b) unfastened his seat belt. PO # 1 pulled § 87(2)(b) out of the vehicle so that they were facing each other. PO # 1 pushed § 87(2)(b) in his chest and he hit the frame between the front door and the back door with his back. PO # 2 was still standing behind PO # 1. PO # 1 asked § 87(2)(b) to turn around. § 87(2)(b) asked him why and PO # 1 said, "Shut the fuck up." § 87(2)(b) refused to turn around and clasped his hands in front of him. PO # 2 removed a silver rod, which was about a foot long, extended it in his hand and said, "Either one way or the other you are going to put your hands behind your back." PO # 1 then said, "What the fuck is your problem, turn your fucking hands behind your back."

PO # 1 picked § 87(2)(b) up by wrapping both of his arms around his waist, causing his feet to leave the ground and both fell to the ground. § 87(2)(b) fell on top of PO # 1, who initially fell on his back and they were both facing each other. § 87(2)(b) moved off of PO # 1 and laid face down on the ground. PO # 1 knelt over onto § 87(2)(b) § 87(2)(b)'s forehead scraped the floor and he obtained a small scrape. PO # 1 grabbed § 87(2)(b)'s left hand and attempted to place it behind his back in order to handcuff him. At this point, an unidentified officer, PO # 3, approached the scene. PO # 3 exited his vehicle for a couple of minutes and stood about two or three feet away from PO # 1 and § 87(2)(b) PO # 3 asked PO # 1 and PO # 2 if everything was under control. § 87(2)(b) could not see PO # 3 or the vehicle he arrived in because of his position on the ground but heard him identify himself to PO # 1 and PO # 2. PO # 2 told PO # 3 that everything was under control so PO # 3 left the scene. PO # 1 had his knee on the back of § 87(2)(b)'s neck and said, "You're lucky the other officer was passing by because I would have broken your fucking arm." PO # 1 tightly handcuffed § 87(2)(b)'s hands behind his back. § 87(2)(b) indicated that his registration was in the glove compartment. § 87(2)(b) was still lying on the ground when four additional male plainclothes officers arrived at the scene in three unmarked vehicles. Before the officers transported him to the precinct, he asked PO # 1 and PO # 2 to lock the tractor-trailer for him. § 87(2)(b) was held at the precinct for an hour and was released with four summonses for § 87(2)(b) § 87(2)(b) received a cut on his chin and his wrist was bleeding from the handcuffs. He also received a red mark from the top left side of his neck to his shoulder. § 87(2)(b) said he never requested any medical attention because he just wanted to go home.

Results of Investigation

Identification of Officers Interviewed

§ 87(2)(b) identified PO Mulhearn in the initial narrative within the civilian complaint report (encl. 6). PO Mulhearn's name and tax number appear on the summonses (encl. 11-11a) he issued to § 87(2)(b) PO Mulhearn's memo book identifies Sgt. Downes as his partner for January 26, 2006. PO Mulhearn also indicated he was working with Sgt. Downes during his CCRB statement. The tour 3 roll call (encl. 15-151) confirms that Sgt. Downes was the anti crime supervisor for January 26, 2006 and he confirmed his presence at the scene during his CCRB statement.

Officer Statements

Sgt. Sean Downes

On January 26, 2006 Sgt. Downes, a white male who is 5'11", approximately 225 pounds with brown hair and blue eyes, worked from 5:26 p.m. until 2:10 a.m. and was assigned to a plainclothes anti crime unit with PO Mulhearn in unmarked vehicle # 972. Sgt. Downes was the recorder. Sgt. Downes had his shield displayed around his neck. He was in possession of his firearm, a flashlight, handcuffs, and a vest but no asp. Sgt. Downes was interviewed at the CCRB on May 18, 2006 (encl. 10-10e). He did not have any entries in his memo book regarding this incident.

Sgt. Downes and PO Mulhearn were stationary in their vehicle when they observed § 87(2)(b) drive a white Jeep Cherokee past five or six red lights while going approximately 50-60mph in a 35mph zone. Sgt. Downes was not aware of any lights in that area that were malfunctioning that night. Sgt. Downes could not recall if there was anything out of the ordinary about § 87(2)(b)'s license plate. Both Sgt. Downes and PO Mulhearn made the decision to stop § 87(2)(b) to obtain an explanation for his conduct and to find out why he was driving at that rate of speed while passing numerous red lights. PO Mulhearn and Sgt. Downes followed the vehicle northbound and activated their lights and sirens. § 87(2)(b) made a left on Liberty Avenue and headed west, passing stop signs and disobeying additional red lights. Consequently, Sgt. Downes and PO Mulhearn believed they were dealing with a stolen vehicle. § 87(2)(b) did not stop and continued westbound on Liberty Avenue for several blocks. Sgt. Downes assumed § 87(2)(b) was aware of their presence because the sirens were loud and the lights were bright. Their vehicle was approximately two or three car lengths behind § 87(2)(b). PO Mulhearn maintained the same position behind § 87(2)(b) for two minutes until he made a U-turn on Liberty and Fountain Avenue. § 87(2)(b) pulled behind a detached trailer, which was parked in the street. At first the trailer blocked their view of § 87(2)(b) but as PO Mulhearn drove further on Liberty Avenue they had full view of § 87(2)(b) and his vehicle. By the way that § 87(2)(b) stopped his vehicle, Sgt. Downes believed he pulled over to evade them or possibly shoot them. PO Mulhearn stopped on the north side of the street about fifteen feet away from § 87(2)(b)'s vehicle, which was parked on the south side of the street.

Sgt. Downes' experience has taught him that driver's of stolen vehicles usually do not stop the vehicle at all, so when § 87(2)(b) made the U-turn and stopped his vehicle, Sgt. Downes classified his behavior as abnormal. PO Mulhearn and Sgt. Downes pulled up, stopped and exited their vehicle. At that point, PO Mulhearn and Sgt. Downes feared that § 87(2)(b) had a firearm and was about to open fire because his driver side door swung open. Sgt. Downes and PO Mulhearn exited their vehicle together. Sgt. Downes positioned himself behind the passenger side door and removed his gun from his holster, which remained pointed down by his side. Once it became clear that § 87(2)(b) was not firing any weapons and did not appear to be armed, PO Mulhearn approached the vehicle. Sgt. Downes placed his gun back in the holster and walked behind PO Mulhearn. Sgt. Downes was not sure if PO Mulhearn ever removed his gun from his holster. Sgt. Downes was not holding any type of equipment in his hand when he approached § 87(2)(b)'s vehicle. Sgt. Downes could not recall if § 87(2)(b) was wearing a seatbelt. PO Mulhearn and Sgt. Downes approached § 87(2)(b)'s vehicle. When they reached § 87(2)(b)'s vehicle, Sgt. Downes stood next to PO Mulhearn. § 87(2)(b)'s vehicle was running. Sgt. Downes and PO Mulhearn instructed § 87(2)(b) to let go of the wheel and exit the vehicle at least ten times. § 87(2)(b) refused to exit the vehicle, latched onto the steering wheel and began screaming.

After verbally trying to gain compliance, it became apparent that Sgt. Downes and PO Mulhearn would have to gain compliance an alternate way so that § 87(2)(b) would not have the opportunity to drive away or use the vehicle as a possible weapon. PO Mulhearn and Sgt. Downes, fearing for their safety, decided they would have to shut the vehicle off and physically remove § 87(2)(b) from his vehicle. Sgt. Downes grabbed § 87(2)(b) by his shoulders and upper arms. Sgt. Downes remembered seeing the seatbelt hanging by the car but did not remember if § 87(2)(b) was ever wearing it. As Sgt. Downes and PO Mulhearn were removing him from the vehicle, which took approximately two minutes, all three fell to the

ground from the momentum. Sgt. Downes and PO Mulhearn remained on the ground with § 87(2)(b) and attempted to place him in handcuffs. § 87(2)(b) stiffened his body and held his hands underneath him, refusing to be handcuffed. Sgt. Downes and PO Mulhearn had to physically place his hands behind his back and handcuff him, which took a few minutes. § 87(2)(b) never stated why he was in the area or why he was driving the way he was. § 87(2)(b) mentioned that the trailer belonged to him but that information was never confirmed. Sgt. Downes could not remember if he ever viewed § 87(2)(b)'s license or registration at the scene and could not recall if the vehicle was registered to § 87(2)(b). After § 87(2)(b) was handcuffed, an unmarked vehicle arrived at the scene. Sgt. Downes did not recall how long the unmarked vehicle remained at the scene. Sgt. Downes could not remember if § 87(2)(b) was still on the ground or if he was standing when the additional unit arrived. Sgt. Downes was not sure if the additional unit was another anti crime unit but he confirmed that he never called for back up.

After he was handcuffed Sgt. Downes made the decision to transport § 87(2)(b) to the stationhouse to find out further details as to why he engaged in such erratic driving. Since they had not received any information back regarding the Jeep, Sgt. Downes wanted to get back to a safe environment to run the license plates and vin number on the vehicle. Sgt. Downes and PO Mulhearn conducted a search of § 87(2)(b) prior to transporting him to the precinct for safety purposes. Sgt. Downes could not recall if § 87(2)(b) was on the ground or free standing when the search was conducted. Sgt. Downes never removed any equipment such as a flashlight or a metal rod as he was attempting to get § 87(2)(b) handcuffed. Sgt. Downes only had his handcuffs in his hand. Once all of the proper information was obtained at the precinct regarding the vehicle, § 87(2)(b) was issued four summonses and released. Sgt. Downes never heard PO Mulhearn threaten to break § 87(2)(b)'s arm. § 87(2)(b) was never pushed in his chest but said it was possible he was leaned against the vehicle. The commands that were given to § 87(2)(b) never included the use of any discourteous language.

PO Edward Mulhearn

Summons #§ 87(2)(b) (encl. 11-11a)

PO Mulhearn issued § 87(2)(b) these summonses on January 26, 2006 for § 87(2)(b).

CCRB Statement

On January 26, 2006, PO Mulhearn, a white male, who is 6'1", approximately 200 pounds with black hair and brown eyes worked from 5:30 p.m. until 2:05 a.m. and was assigned to the plainclothes anti crime unit with Sgt. Downes. He had his firearm, handcuffs and a flashlight with him. He was the operator of a black Chevy Impala. PO Mulhearn was interviewed at the CCRB on May 4, 2006 (encl. 12-12f). He had the following entry in his memo book regarding the incident: ***0120 car stop at Liberty and Fountain Avenue. Driver went through numerous red lights at high rate of speed and then made abrupt U-turn at intersection of Liberty and Fountain. Driver would then not exit vehicle after being told numerous times by A/O. Driver began to yell and scream at police officers. Driver was handcuffed and brought back to 75th Precinct, put in desk log. No money, no injuries, released with two "c" summonses, 2 moving violations, which consisted of § 87(2)(b).***

PO Mulhearn and Sgt. Downes were in the process of conducting an investigation for the anti crime team when they noticed a white Jeep Cherokee drive past two red lights at 80-90 mph. The jeep had Florida license plates that were hanging off. § 87(2)(b) made a U-turn and parked half way on the sidewalk behind the tractor-trailer, which led PO Mulhearn to believe he was attempting to flee. PO Mulhearn stopped his vehicle approximately eight feet away from § 87(2)(b)'s vehicle. PO Mulhearn and Sgt. Downes exited their vehicle together but did not have their guns drawn. PO Mulhearn did not have any equipment, such as a flashlight or a metal asp, in his hand. In fact, PO Mulhearn and Sgt. Downes suspected they were going to have to run after § 87(2)(b) so they kept their firearms in the holster. PO Mulhearn approached § 87(2)(b)'s driver side door first as Sgt. Downes stood directly behind him. PO Mulhearn instructed § 87(2)(b) to turn off his vehicle and exit at least ten times.

§ 87(2)(b) was physically removed out of the vehicle by PO Mulhearn and handcuffed. PO Mulhearn opened § 87(2)(b)'s door and grabbed onto § 87(2)(b)'s left arm with either his right or left hand. PO Mulhearn grabbed onto his arm and said, "This is either going to be the hard way or the easy way, just get out of the vehicle." PO Mulhearn described it as a tug of war match because § 87(2)(b) would not let go of the steering wheel. Finally, after pulling him for fifteen seconds, § 87(2)(b) released his hand from the steering wheel and was removed from the vehicle. PO Mulhearn leaned § 87(2)(b) face first against the jeep. § 87(2)(b) tensed up and refused to put his hands behind his back. Sgt. Downes had to physically place § 87(2)(b)'s hands behind his back. § 87(2)(b) was standing up when he exited the vehicle but then at some point he was on the ground because PO Mulhearn recalled rolling him over to search him for any weapons. PO Mulhearn could not remember if § 87(2)(b) was told to get to the ground or if he fell to the ground at some point during the incident. § 87(2)(b) admitted to PO Mulhearn that he drove through two red lights.

After § 87(2)(b) was placed in the back of their patrol car, PO Mulhearn examined the lungeable areas of § 87(2)(b)'s vehicle to make sure that the steering column was not damaged. PO Mulhearn and Sgt. Downes confirmed the vehicle was registered to another individual. PO Mulhearn explained that it is possible for a car to be stolen and not be in the computer because it takes a certain amount of time for it to be reported and entered into the database. At the precinct, § 87(2)(b) told PO Mulhearn that he was going to beat himself up and make it look like the officers hurt him. PO Mulhearn took pictures of § 87(2)(b) at the precinct to confirm that he was never injured. PO Mulhearn could not confirm whether Sgt. Downes was ever holding an asp. PO Mulhearn confirmed that he was the only officer who had verbal interaction with § 87(2)(b) prior to his removal from the vehicle. PO Mulhearn never threatened to break § 87(2)(b)'s arm and never spoke discourteously towards § 87(2)(b). § 87(2)(b) was never pushed in his chest after he was removed from his vehicle.

Officers Not Interviewed

PO # 3 was not identified and interviewed because it still remains unclear if this officer was even present at the scene. § 87(2)(b) did not see PO # 3 or the vehicle in which he arrived. Furthermore, according to § 87(2)(b)'s statement, PO # 3 would not have been present for the above allegations. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Police Department Documents

Sprint # X00867 & NYPD Communications CD (encl. 13)

The Sprint report indicates that there was an arrest made at 1:27 a.m. in the vicinity of Fountain Avenue and Liberty Avenue by the 75th Precinct anti crime team.

NYPD Photographs (encl. 14)

Photographs were taken of § 87(2)(b) at the 75th Precinct to confirm that he did not obtain any physical injuries while in police custody. PO Mulhearn provided these photographs during his CCRB statement.

Roll Call- 75th Precinct (encl. 15-15l)

The tour 3 roll call for January 26, 2006 indicates that Sgt. Downes was assigned as the anti crime supervisor from 5:26 p.m. until 2:10 a.m. in vehicle # 8142. PO Mulhearn was assigned to the anti crime team in vehicle # 297 with PO Castrogiovanni and worked from 5:30 p.m. until 2:05 a.m. PO Mulhearn's testimony as well as memo book entry confirmed the fact that he was working with Sgt. Downes in vehicle # 297 on January 26, 2006.

Police Officer CCRB History

Sgt. Downes and PO Mulhearn do not have any prior substantiated CCRB allegations (encl. 4-4b).

Complainant CCRB History

§ 87(2)(b) has not made any prior CCRB complaints (encl. 5).

Civilian Criminal Conviction History

A search of BADS revealed that § 87(2)(b) does not have any prior criminal convictions in New York State as of January 1, 2000.

Summons Disposition

Summons # § 87(2)(b), and # § 87(2)(b) was adjourned on April 3, 2006. For summons # § 87(2)(b), judgement was ordered on June 6, 2006.

Conclusions and Recommendations

Identification of Subject Officers

It is apparent from § 87(2)(b)'s physical description of PO Mulhearn and Sgt. Downes that he confused the two officers during his CCRB statement. However, based on further analysis of § 87(2)(b)'s statement and the officers' statements the following was determined. Allegations A and B are being pleaded against Sgt. Downes and PO Mulhearn because § 87(2)(b) alleged that both officers had their guns drawn when they exited the unmarked vehicle. Allegations C, D, F are being pleaded against PO Mulhearn because he confirmed that he was the driver of vehicle # 297, which § 87(2)(b) identified as PO # 1. PO Mulhearn testified that he pulled § 87(2)(b) out of his vehicle without the help of Sgt. Downes. PO Mulhearn testified that he approached § 87(2)(b)'s vehicle first and was the only officer to have verbal interaction with § 87(2)(b) before he exited his vehicle. § 87(2)(b) specified that PO # 1 threatened to break his arm. Allegation E is being pleaded against Sgt. Downes because he confirmed that he was the passenger of vehicle # 297, which § 87(2)(b) identified as PO # 2. PO # 2 was identified as the officer who removed an asp while threatening § 87(2)(b). According to § 87(2)(b) PO # 2 had minimal physical interaction with him.

Undisputed Facts

§ 87(2)(b) drove to Liberty Avenue to ensure that his tractor-trailer was properly locked and in doing so drove through a red light at the intersection of Crystal Street and Liberty Avenue and made an illegal U-turn on Liberty Avenue. PO Mulhearn and Sgt. Downes stopped their vehicle on Liberty Avenue and approached § 87(2)(b)'s vehicle. § 87(2)(b)'s vehicle was still running when PO Mulhearn and Sgt. Downes approached. Sgt. Downes drew his gun upon exiting his vehicle. First, PO Mulhearn verbally instructed § 87(2)(b) to exit his vehicle. Then, in order to gain compliance, PO Mulhearn grabbed § 87(2)(b) and pulled him from his vehicle. PO Mulhearn, Sgt. Downes and § 87(2)(b) all agree it took two minutes for him to exit the vehicle. § 87(2)(b) refused to be handcuffed. Additional plainclothes officers arrived after § 87(2)(b) was handcuffed to escort him to the precinct. § 87(2)(b) was taken to the 75th Precinct to confirm that his vehicle was not stolen. PO Mulhearn issued § 87(2)(b) four summonses and he was released from the precinct. § 87(2)(b) was not driving a stolen vehicle. § 87(2)(b) did not receive any visible injuries on his face while in police custody.

Disputed Facts

§ 87(2)(g)

§ 87(2)(g)

Credibility

§ 87(2)(g)

§ 87(2)(b) claims that he received a scrape on his forehead and a cut on his chin. PO Mulhearn took photographs of § 87(2)(b) at the precinct and provided them during his CCRB statement to prove that § 87(2)(b) did not receive any injuries during the incident. In addition, § 87(2)(b) alleged that a third unidentified officer arrived at the scene after he was removed from the vehicle and was on the ground. PO Mulhearn and Sgt. Downes both denied another officer arriving at the scene until § 87(2)(b) was handcuffed. § 87(2)(g)

In the written statement, § 87(2)(b) indicated that PO Mulhearn pushed his face into the street. He confirmed during his CCRB statement that this did not occur.

§ 87(2)(g)

Allegations Not Pleaded

Regardless of whether the traffic light was broken, § 87(2)(b) admitted to making an illegal U-turn on Liberty Avenue. Sgt. Downes and PO Mulhearn were consistent about using their lights and sirens. § 87(2)(g)

§ 87(2)(b) did not allege that his vehicle or his person was searched during the incident. However, during PO Mulhearn's statement he acknowledged the fact that he searched the lungeable areas of § 87(2)(b)'s vehicle to ensure that the steering column was intact and that the vehicle did not appear to be stolen. A search of his person was conducted prior to his transport to the precinct to ensure that he was not in possession of any weapons. § 87(2)(g)

Allegation A: Abuse of Authority: Sgt. Sean Downes drew his gun.

Allegation B: Abuse of Authority: PO Edward Mulhearn drew his gun

§ 87(2)(b) alleged that PO Mulhearn and Sgt. Downes both had their guns drawn but not pointed as they approached his vehicle. Sgt. Downes testified that he removed his firearm from the holster. PO Mulhearn, on the other hand, denied ever removing his firearm. Although PO Mulhearn denied engaging in this action, the allegation is going to be analyzed with the presumption that he did draw his weapon. § 87(2)(g)

§ 87(2)(b) § erratic behavior of passing numerous red lights, driving over the speed limit and not stopping his vehicle right away led Sgt. Downes and PO Mulhearn to suspect he was driving a stolen vehicle. Sgt. Downes testified that as he and PO Mulhearn exited their vehicle he feared for his safety when § 87(2)(b) abruptly stopped his vehicle and swung open his driver side door. PO Mulhearn testified that by the way § 87(2)(b) parked his vehicle, which was halfway on the sidewalk, it appeared as if he was going to flee from his vehicle. Sgt. Downes, fearing that § 87(2)(b) was in possession of a firearm, removed his gun from his holster, which remained pointed down by his side and gained cover behind his vehicle door. According to *PD v Gliner* there are no regulations or guidelines concerning the drawing of a weapon. The policy of the department is that an officer can draw his firearm so long as he has reasonable fear for his own or another's personal safety. Thus, the Department permits broad discretion to display his weapon whenever he feels that his life or the life of another is endangered. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Discourtesy: PO Edward Mulhearn spoke obscenely to § 87(2)(b)

Allegation D: Force: PO Edward Mulhearn used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Mulhearn spoke obscenely to him as he instructed him to exit the vehicle and again after he exited the vehicle. PO Mulhearn denied using such language. According to PO Mulhearn and Sgt. Downes, § 87(2)(b) was asked several times to exit his vehicle and he refused. § 87(2)(b) acknowledged the fact he clinched his hands together and refused to be handcuffed and the officers corroborated this behavior. § 87(2)(g)

§ 87(2)(g)

According to *NYPD v Bitchatchi* "Profanity is permissible where the officer has resorted to such language in order to forcefully make a point, or to gain compliance with a direction." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Mulhearn testified that he verbally commanded § 87(2)(b) to exit his vehicle several times and he did not comply. Furthermore, § 87(2)(b) admitted that it took him a couple of minutes to exit the vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

As is stated in Patrol Guide Procedure 203-11, "All uniformed members of service are responsible and accountable for the proper use of force under the appropriate circumstances." § 87(2)(g)

§ 87(2)(g)

Allegation E: Abuse of Authority: Sgt. Sean Downes threatened § 87(2)(b) with the use of force.

Allegation F: Abuse of Authority: PO Edward Mulhearn threatened § 87(2)(b) with the use of force.

Sgt. Downes denied having or removing an asp or any object that was remotely similar as he attempted to handcuff § 87(2)(b) and he never said, "Either one way or the other you are going to put your hands behind your back." PO Mulhearn denied saying, "You are lucky the other officer was passing by because I would have broken your fucking arm." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: